

Incentivised and mandated vaccination policy and the fundamental conflict with valid voluntary informed consent

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Dear Professor Kerridge

I am currently examining the development and application of the valid consent provisions in successive editions of *The Australian Immunisation Handbook*, and would appreciate your perspective as a bioethicist whose work is cited as a source for these provisions.

The 9th edition (released in 2008) stated that, for consent to be legally valid, **"It must be given voluntarily"**. The 10th edition (released in 2013) expanded this to:

"It must be given voluntarily in the absence of undue pressure, coercion or manipulation."

This wording remains in [the current Handbook](#). The current Handbook cites *Ethics and Law for the Health Professions*, 4th ed. (Kerridge, Lowe and Stewart, 2013), together with Staunton and Chiarella's *Law for Nurses and Midwives*, as references for the four elements it says must be present for consent to be legally valid.

As your work is cited as a source for these requirements, I would appreciate your explanation of how the requirement for voluntariness is to be understood. In particular, **does *Ethics and Law for the Health Professions* discuss what constitutes undue pressure, coercion or manipulation for the purposes of valid consent?**

I am also interested in **what prompted the express inclusion of voluntariness in the 9th edition of the Handbook, and its subsequent expansion in the 10th edition to specify "the absence of undue pressure, coercion or manipulation"**. I appreciate that you may not have been involved in drafting these provisions, but would be interested to know whether you are aware of the ethical or legal developments underlying these changes.

This is particularly significant given the longstanding use of government policies/laws intended to incentivise vaccination, and more recently COVID-19 vaccination mandates under which people faced significant penalties for declining vaccination, e.g. loss of livelihood under AHPPC recommendations and state and territory directions.

Your 2011 paper with Julie Leask and Annette Braunack-Mayer states that valid consent requires patients or parents to be able to act "freely and voluntarily", citing your book *Ethics and Law for the Health Professions*. Your paper also notes that high vaccination coverage in Australia had been achieved through strategies including "financial incentives for immunisation providers and parents", before observing: "Nevertheless, the question remains of how to ensure valid consent while upholding population health". (Financial incentives for parents to have their children vaccinated were [first enacted by the Commonwealth in 1998](#). Subsequently the Commonwealth No Jab, No Pay law (2016) and state No Jab, No Play vaccine laws (first legislated in NSW and coming into effect in 2014) have been implemented in Australia.)

The requirement for voluntary informed consent has been expressly stated in the Handbook for many years, and in other sources such as [a code of conduct for doctors in Australia](#) and ACSQHC guidance on informed consent. The ACSQHC 2020 *Informed consent in health care* guidance (attached) required a person to **"Give their consent voluntarily"**, while the current [Informed Consent practical guidance for clinicians](#) states that a person must **"choose to give consent freely, without pressure"**.

So how can government policies/laws deliberately designed to influence vaccination decisions through financial incentives, and more recently COVID-19 vaccine mandates with significant penalties for declining vaccination, exist when there is a requirement that consent be given "in the absence of undue pressure, coercion or manipulation"?

There is also the separate requirement that consent "can only be given after the potential risks and benefits of the relevant vaccine, the risks of not having it, and any alternative options have been explained to the person".

But the provision of this information can only facilitate a genuinely informed decision if the person is free to consider it and act upon it, including by declining vaccination, without being subject to incentives or penalties intended to influence that decision.

During the COVID-19 vaccination mandates, the constraints on the person's freedom of choice were compounded by the position in which registered practitioners themselves were placed. Practitioners were operating under Ahpra and the National Boards' [9 March 2021 Position Statement](#), which warned that advice which sought to "actively undermine the national immunisation campaign" could be "subject to investigation and possible regulatory action", and stated that practitioners' social media activity must not "contradict or counter public health campaigns or messaging, such as the Australian COVID-19 Vaccination Policy".

How could practitioners independently fulfil their personal ethical obligation to provide the information necessary for a person to make a valid informed decision, including information which might lead that person to decline vaccination, while also being subject to regulatory expectations that they not contradict or counter the government's vaccination campaign or messaging, and the prospect of investigation and possible regulatory action if their advice was considered to "actively undermine" that campaign? In those circumstances, to what extent were practitioners free to question the vaccination campaign or its messaging?

Finally, at the heart of this matter is this fundamental question:

Why wasn't the conflict between the implementation of vaccination incentives and mandates and the requirements for valid voluntary informed consent questioned or challenged by the relevant authorities and ethicists, despite the continuing ethical obligation on individual practitioners to obtain valid voluntary informed consent before administering a vaccine?

This is a most serious matter of medical ethics and public accountability and I intend to publish this correspondence on my Substack. I would welcome your response for publication.

Kind regards

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ACSQHC Informed Consent in Health Care - 2020.pdf
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